

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

ORIGINAL
ILLINOIS
COMMERCE COMMISSION

2003 DEC 26 P 1:21

CHIEF CLERK'S OFFICE

THE MUSIC ZONE,

Complainant,

VS.

THE PEOPLES GAS LIGHT AND
COKE COMPANY,

Respondent.

ICC No. 02-0472 and
02-0524 (Cons.)

RESPONDENT'S MOTION TO COMPEL DISCOVERY

NOW COMES RESPONDENT, The Peoples Gas Light and Coke Company, by and through its attorney, Brett J. Beattie, and pursuant to Sections 200.190 and 200.370 of the Illinois Commerce Commission (“Commission”) Rules of Practice (“Rules”), 83 Ill. Adm. Code 200.10 et seq., hereby requests the Administrative Law Judge (the “Judge”) to issue a ruling at the December 30, 2003 hearing in this proceeding compelling Complainant to answer Respondent’s Second Set of Data Requests. In support of its motion, Respondent states as follows:

1. On July 17, 2002, Complainant filed a formal complaint with the Commission regarding Case No. 02-0472.
2. On August 13, Music Zone filed another formal complaint with the Commission regarding Case No. 02-0524.
3. On September 4, 2002, Music Zone's complaint in 02-0472 was consolidated with its complaint in 02-0524.
4. On October 16, 2003, the Judge held a status hearing where she required Peoples Gas to propound any discovery requests by October 31, for Complainant to

respond to such requests before the next status hearing, which was then set for November 21, 2003.

5. On October 31, 2003, Peoples Gas propounded "Respondent's Second Set of Data Requests to Complainant," by first-class mail, postage paid. A copy of the Data Requests are attached hereto as Exhibit A.

6. The Judge continued the November 21, 2003 status hearing until December 3, 2003.

6. Between November 21, 2003 and December 3, 2003, Peoples Gas' attorney Brian McCarthy withdrew as counsel and attorney Brett Beattie replaced him as counsel to Peoples Gas.

7. At the December 3, 2003 status hearing, Complainant agreed to fully and completely respond to "Respondent's Second Set of Data Requests to Complainant" in such timely manner so that Peoples Gas could review the answers and address any outstanding discovery concerns at the next status hearing, which is set for December 30, 2003.

8. Complainant has not answered Peoples Gas' outstanding discovery requests although it has been in possession of these requests since October 31, 2003.

9. Pursuant to 83 Ill. Adm. Code 200.80, *Computation of Time*, and 83 Ill. Adm. Code 200.150(c), *Service*, Complainant's response was due at the latest November 21, 2003, yet because of the Judges earlier order during the October status hearing, was due by November 21, 2003.

10. On December 9, 2003 Counsel for Peoples Gas telephoned Mr. Robert Habib, attorney for Music Zone. During the telephone conversation, Mr. Habib agreed that his client would answer the October 31, 2003 data requests from Peoples Gas no later than December 12, 2003.

11. On December 9, 2003, Peoples Gas sent by U.S. Mail a letter confirming the parties' agreement that Music Zone answer outstanding discovery requests by

December 12, 2003. A copy of the confirmation letter is attached hereto as Exhibit B. In that letter, addressed to Mr. Habib, Music Zone was directed to contact Peoples Gas' counsel if it had a different understanding than that contained in the letter.

12. Counsel for Peoples Gas has not received any communications or correspondence from Music Zone or its attorneys.

13. On December 18, 2003, Peoples Gas sent to Mr. Habib, by U.S. Mail, another request and demand that it answer the October 31 Data Requests propounded to it by Peoples Gas. A copy of that letter is attached hereto as Exhibit C.

14. On December 19, 2003, Peoples Gas' counsel telephoned Mr. Habib and left a message on his answering machine again requesting and demanding that Music Zone answer the October 31 Data Requests.

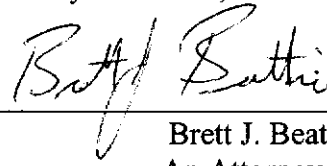
15. On December 22, Peoples Gas' counsel telephoned Mr. Habib and left a message on his answering machine again requesting and demanding that Music Zone answer the October 31 Data Requests.

16. To date, Peoples Gas has received no response to "Respondent's Second Set of Data Requests to Complainant" or its phone message.

WHEREFORE, Respondent respectfully requests that the Judge to issue a ruling on December 30, 2003, compelling Complainant to promptly answer "Respondent's Second Set of Data Requests to Complainant." In addition, Respondent respectfully request that the Judge delay the evidentiary hearing in this matter, currently set for January 16, 2004 at 10 a.m.

Respectfully submitted,

By



Brett J. Beattie
An Attorney for

The Peoples Gas Light and Coke Company

Brett J. Beattie
Counsel to Peoples Gas
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Suite 4400
Chicago, IL 60601
Phone: (312) 641.2068

Dated this 24th day of
December, 2003, at Chicago, Illinois

STATE OF ILLINOIS)
) ss
COUNTY OF COOK)

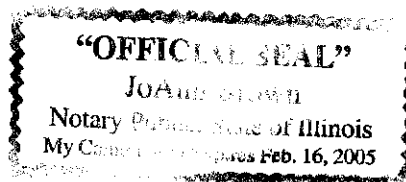
VERIFICATION

I, Brett J. Beattie, being first duly sworn upon oath, depose and say that I have read the above and foregoing Respondent's Motion To Compel Discovery by me subscribed and know the contents thereof; and that said contents are true in substance and in fact.

By Brett J. Beattie
Brett J. Beattie
An Attorney for
The Peoples Gas Light and Coke Company

SUBSCRIBED and **SWORN** to before
me this 24 day of December 2003

JoAnn Brown
Notary Public



**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

MUSIC ZONE,
Complainant,

v.

THE PEOPLES GAS LIGHT AND COKE COMPANY,
Respondent.

ICC # 02-0472

NOTICE OF FILING

To: Mr. Robert Habib

77 W. Washington, Ste. 411
Chicago, IL 60602

Admin. Law Judge Haynes
Illinois Commerce Commission
160 North LaSalle Street, Ste. C-800
Chicago, Illinois 60601-3104

PLEASE TAKE NOTICE that on this date Respondent in the above-captioned case sent by U.S. mail for filing with the Illinois Commerce Commission, 527 East Capitol Avenue, P.O. Box 19280, Springfield, Illinois 62701, a Respondent's Motion to Compel Discovery.

DATED: December 24, 2003

THE PEOPLES GAS LIGHT
AND COKE COMPANY

By: Brett J. Beattie
Brett J. Beattie, one of its attorneys

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of this Respondent's Motion to Compel Discovery on Complainant and the Administrative Law Judge by causing a copy to be placed in the U.S. mail, properly addressed and postage prepaid on December 24, 2003.

Respectfully Submitted,

Brett J. Beattie
Brett J. Beattie

Brett J. Beattie
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